FH [redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
Case #: MPA - 177232

PRELIMINARY RECITALS

Pursuant to a petition filed on October 5, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on December 19, 2016, by telephone.

The issue for determination is whether the agency properly denied the Petitioner's request for coverage of a speech/language evaluation and therapy.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: [redacted]
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Kenosha County.

2. Petitioner is 8 years old. Her primary diagnosis is Down Syndrome. She lives with her family.

3. The Petitioner has participated in the [redacted] program and has received speech services through her school from 3 years of age to the present.

4. On August 16, 2016, [redacted] submitted a PA request for a speech evaluation and speech/hearing therapy services.

5. On September 1, 2016, the agency denied the Petitioner's PA request.

6. On October 5, 2016, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the agency employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of "medically necessary" at §DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.03. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

In this case, the Petitioner's mother testified at the hearing that she is not contesting the agency's denial of the speech therapy services. She does ask for a review of coverage of the evaluation.

An evaluation must still meet the definition of "medically necessary" in order to be a covered service. If the reason for referral or the requested therapy services is not medically necessary or is noncovered, the evaluation will not be reimbursed.

Evaluations that are not considered medically necessary include situations in which there has not been a significant change to the therapy POC goals. ForwardHealth Handbook, Topics #4571 and 2746.

Evaluations are not reimbursed by ForwardHealth when any of the following are true:

- A screening is sufficient. A screening could have provided the same conclusions and recommendations as a comprehensive evaluation.
- Professional skills of a PT, OT, SLP provider are not required to perform the evaluation.
- The evaluation is completed solely because of a change in one of the following:
  - The member's other health insurance coverage.
  - The PT, OT, or SLP provider's employment status (e.g., business ownership).
- The evaluation is not medically necessary (e.g., an evaluation performed for the purpose of vocational training). The requirement and purpose for performance of a service, such as a test or assessment, must be medically necessary, even if the professional skills of a therapist are needed to administer the service. A therapist may have special training or certification that allows the therapist to administer a particular test or assessment, but the need for the member to participate in the testing process must be medically necessary.

If the reason for referral or the requested therapy services is not medically necessary or is noncovered, the evaluation will not be reimbursed. Examples include, but are not limited to, the following:

Therapy services for the member's participation in general gross motor activities, such as riding a bike or swimming, for the purpose of general health and wellness or weight loss.

Therapy services for a program that has been declared experimental in nature, such as auditory integration training services.

Assessments for the purpose of the member's participation in a vocational or recreational program, such as ergonomic evaluations, driving evaluations, or an evaluation to obtain a hunting license. Functional capacity evaluations are not covered by BadgerCare Plus.

Evaluations performed so that a member is able to participate in a program that would not be covered, such as computer or video training, or treatment interventions that may be considered alternative therapies, such as aquatic programs with marine mammals.

Evaluations completed solely to meet facility, agency, program, or clinic requirements (e.g., a therapy evaluation completed solely due to member age or at specified intervals of time).

- The PT, OT, or SLP provider reports a change in the member's status, but the POC is not updated to reflect this change.

According to Topic #4571, evaluations may also be denied if "the evaluation was not complete and comprehensive."

In this case the therapy services were denied for several reasons including a lack of a complete and comprehensive evaluation to determine how the Petitioner's diagnosis impacts her speech intelligibility and what the prognosis is for improved speech intelligibility given her diagnosis, lack of documentation of coordination of services lack of documented progress in therapy, and duplication of services. The agency also noted that there is no new illness or injury to require direct outpatient speech at this time.

The Petitioner's mother testified that services were requested so that the Petitioner would have some speech therapy during the summer when she was not receiving school services. She further testified that the Petitioner uses an assistive device at school for communication but does not really receive "therapy" to help improve her intelligibility. She stated that she felt she needed a second opinion to determine if the Petitioner would benefit from speech therapy.

Based on the evidence submitted, I concur with the agency that the evaluation in this case was not complete and comprehensive. Therefore, denial of the therapy services was correct. Unfortunately for the Petitioner, this also means that denial of coverage for the evaluation was also correct.

I note that the provider may not hold the Petitioner liable for the cost of the evaluation unless the provider informed the Petitioner, prior to providing the evaluation, that she would be liable for the cost if the PA was denied. The pertinent state code provision reads as follows:

> (b) Freedom from having to pay for services covered by MA. Recipients may not be held liable by certified providers for covered services and items furnished under the MA program, except for copayments or deductibles under par. (a), if the petitioner identifies himself or herself as an MA recipient and shows the provider the MA identification card.

> (c) Prior authorization of services. When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. … Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Wis. Admin. Code §DHS 104.01(12)(b),(c).

I do not know if this is applicable to this situation but provide the pertinent law to the Petitioner's mother in the event that it is applicable.

CONCLUSIONS OF LAW

The agency correctly denied coverage for the speech evaluation.

THEREFORE, it is ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of February, 2017

\s_____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on February 2, 2017.

Division of Health Care Access and Accountability